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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,987	11/17/1999	MARK ALAN BURAZIN	13.497.2	5262

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05/08/2002

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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 05/08/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/441,987

Applicant(s)

BURAZIN ET AL.

Examiner

Alicia Chevalier

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1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 48-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 48-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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RESPONSE TO AMENDMENT

Election/Restrictions

1. Applicant's election without traverse of species A, claims 1-22 in Paper No. 6 is acknowledged.

WITHDRAWN REJECTIONS

2. The 35 U.S.C. §102 or §103 rejection of claims 1-6 and 21-22 as anticipated or obvious over Veith et al. (5,356,364) of record in paper #5, page 4, paragraph #7 have been withdrawn.
3. The 35 U.S.C. §103 rejection of claims 1-22 over Wendt et al. (5,672,248) in view of Veith et al. (5,356,364) of record in paper #5, pages 5-7, paragraph #10 have been withdrawn.

REJECTIONS REPEATED

4. The 35 U.S.C. §102 or §103 rejection of claims 1-22 as anticipated or obvious over Wendt et al. (5,672,248) of record in paper #5, pages 4-5, paragraph #8 ~~have been withdrawn~~.

NEW REJECTIONS

5. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 103

6. Claims 48-69 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wendt et al. (5,672,248).

Wendt et al. discloses a creped or uncreped (col. 2, lines 23-27) throughdried tissue sheets with a bulk of about 13 to about 20 cubic centimeters per gram, where the bulk is defined as the caliper of a single ply of product divided by its basis weight (col.3, lines 39-41). Furthermore, such tissue sheets having a basis weight in the range from about 10 to about 70 grams per square meter (col. 3, lines 51-53), which makes a single sheet caliper about 0.013 to about 0.14 centimeters (which is approximately 0.005 to 0.05 inches). The tissue also having a geometric mean modules (geometric mean slope)/geometric mean tensile strength of less than 5 (figure 6, col. 10, lines 27-46), which is the geometric mean stiffness defined as the geometric mean slope divided by the geometric tensile strength. Plus, the tissue sheets have an absorbent capacity of about 11 grams of water per gram of fiber or greater (col. 3-4, lines 66-2).

Since, the absorbent rate of the tissue is determined by basically the same procedure as the absorbent capacity (see specification page 6, lines 26-30) and Wendt discloses the same method of determining the absorbent capacity with similar results and almost all of the applicants' claimed features, the limitation of the "absorbent rate of about 4 seconds or less" is considered to be an inherent property. Also, since Wendt discloses almost all of the applicants' claimed features the limitation of the tissue sheets having a "roll firmness from 4 to about 7 millimeters" is considered to be an inherent property. Finally, with these values the tissues have a roll bulk/roll firmness ratio of about 28.6 to about 32.5 square centimeters per gram and a roll bulk/roll firmness/single sheet caliper ratio of 204 centimeters per gram or greater.

ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments filed in paper #6 regarding the 35 U.S.C. §102 or §103 rejection as anticipated or obvious over Veith et al. (5,356,364) and the 35 U.S.C. §103 rejection over Wendt et al. (5,672,248) in view of Veith et al. (5,356,364) of record have been considered but are moot since the rejections have been withdrawn.

8. Applicant's arguments filed in paper #6 regarding the 35 U.S.C. §102 or §103 rejection as anticipated or obvious over Wendt et al. (5,672,248) of record have been carefully considered but are deemed unpersuasive.

In response to Applicant's argument that it is not inherent in the teachings of Wendt et al. to attain the combination of high bulk and high firmness as claimed by Applicants, it must be noted that Wendt discloses the same uncreped throughdried tissue.

Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the *prime facie* case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. *In re Best*, 562 F.2d at 1255, 195 USPQ at 433.

Therefore, it is inherent that tissue sheets having a "roll firmness from 4 to about 7 millimeters" because the products are identical in structure and/or composition and there is no

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evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product.

Applicant further argues that the winding process being used is set to achieve a particular roll diameter and does not work that well with high bulk sheet and that Applicant has discovered new papermaking fabrics. These arguments are not commensurate in scope with the present claims since they do not have limitations to the winding process or the papermaking fabrics. Applicant has failed to sufficiently point out what limitations of the claims overcome the prior art of record.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139.

The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays


If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Blaine Copenheaver can be reached by dialing (703) 308-1261. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac



4/29/02



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